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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/171,377	10/16/98	BOHLEN	D 6065

EXAMINER

IM22/0308

DOUYON, L

ART UNIT

PAPER NUMBER

1751

DATE MAILED:

03/08/00

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/171,377

Applicant(s)

BOHLEN ET AL

Examiner

LORNA M. DOWYON

Group Art Unit

1751

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE(3) MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on DEC 9, 1999
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1, 3-16 is/are pending in the application.  
Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1, 3-16 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

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This action is responsive to the amendment filed on December 9, 1999.

This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b) as stated in the office action in paper number 6. An abstract on a separate sheet is required.

The cancellation of claim 2 is acknowledged.

Claim 12 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s). The limitations of claim 12 have been incorporated into claim 11, hence claim 12 should have been cancelled.

Claims 1, 3-16 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Welch et al. (U.S. Patent No. 5,574,005), hereinafter "Welch" for the reasons set forth in the office action in paper number 6.

Claims 15-16 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Nassano et al. (US Patent No. 5,691,297), hereinafter "Nassano" for the reasons set forth in the office action in paper number 6.

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*Response to Applicants' Arguments*

Applicants' arguments filed on December 9, 1999 have been fully considered but they are not persuasive.

With respect to Welch, Applicants argue that Welch teaches away from the present invention and do not appreciate the key feature of this invention. i.e., that the surfactant paste is substantially free of materials which produce a gas when reacted with an acid, the materials being carbonates, percarbonates and perborates.

The Examiner respectfully disagrees with the above argument because Welch teaches that the surfactant paste is regulated with sodium carbonate such that the paste has a Maximum Shear Rate of at least  $20 \text{ sec}^{-1}$ , most preferably from about  $85 \text{ sec}^{-1}$  to about  $130 \text{ sec}^{-1}$  so that the surfactant paste is processable, and that the level of sodium carbonate will typically be from about 0% or 0.1% to about 5% (underlining supplied, see col. 5, lines 33-44). Welch, in Example II, Component A (see col. 13, lines 5-54), exemplifies a surfactant paste containing no sodium carbonate and having a Maximum Shear Rate of  $127 \text{ sec}^{-1}$ , yet it is successfully used to produce detergent agglomerates (see col. 13, lines 55-62). Hence, it cannot be said that Welch does not teach a surfactant paste that is substantially free of carbonates. Additionally, "substantially free" does not necessarily mean that the paste is free of carbonates. The term "substantially free" excludes large amounts, but can include small amounts, of carbonate, say for example, 0.5 wt% carbonate as in Example II, Component B of Welch (see Table II under col. 13). Hence, even the

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surfactant paste of Welch, containing small amounts of carbonate as mentioned above, is still readable on the present claims.

With respect to Nassano, Applicants argue that Nassano fails to disclose the recited process for preparing the detergent composition and Nassano fails to suggest the step wherein the surfactant paste is substantially free of materials which produce a gas when reacted with an acid, the materials being carbonates, percarbonates and perborates.

The Examiner respectfully disagrees with the above argument because Nassano teaches a similar high density detergent composition comprising 21.6 wt% C<sub>14</sub>-C<sub>15</sub> alkyl sulfate, 7.2 wt% C<sub>12,3</sub> linear alkylbenzene sulfonate, 32.4 wt% aluminosilicate, and 0.5 wt% polyethylene glycol (see Example at Table I under col. 12). Even though Nassano does not disclose the recited process, as already stated in the office action in paper number 6, the present claims 15-16 are product-by-process claims, hence any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct, not the examiner to show the same process of making, see *In re Brown*, 173 USPQ 685 and *In re Fessmann*, 180 USPQ 324. Applicants have not submitted any evidence to show that their detergent composition is actually different from and unexpectedly better than the prior art.

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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is (703) 305-3773. The examiner can normally be reached on Mondays-Fridays from 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (703) 308-4708. The fax phone number for this Technology Center is:

(703) 305-3599 - for Official After Final faxes

(703) 305-7718 - for all other Official faxes.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center receptionist whose telephone number is (703) 308-0661.

March 8, 2000

*Lorna M. Douyon*  
Lorna M. Douyon  
Primary Examiner